

CHAPTER 1

INTRODUCTION TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES SMALL BUSINESS PROGRAM

*The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well being but to the security of this Nation. Such security and well being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. **It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns** in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.¹*

- Small businesses are important to the United States. We have Government programs to support and assist small businesses because they make valuable contributions to our economy.
- Small businesses create most new American products and technologies, including such things as the computer chip, the rocket engine, xerography, and the ballpoint pen.
- Small businesses contribute substantial tax revenues.
- Small firms are a vital part of the Nation's industrial/defense mobilization base.
- Small businesses generate competition and ensure a competitive economic climate.
- Despite their large numbers and important role in the economy, small businesses receive less than 25% of Federal Government prime contract awards.

¹Small Business Investment Act of 1958, 15 U.S.C. 631, Section 2.(a)

A. AUTHORITY

The Small Business Act, Public Law (P.L.) 83-163, established the authority for loans, procurement set-asides, management counseling, certificates of competency, and advocacy to assist small businesses. The 1978 amendments to the Act, P.L. 95-507, established small business-small purchase set-asides; subcontracting plan requirements for certain prime contracts, and provided the statutory basis for the 8(a) business development program. P.L. 95-507 further required the establishment of an Office of Small and Disadvantaged Business Utilization (OSDBU) in each Federal agency.

P.L. 100-656, the 1988 amendments to the Act, introduced competition to the 8(a) program and established a process for setting goals for procurement prime contract and subcontract awards to small and small disadvantaged business concerns.

P.L. 100-656 required that liquidated damages be assessed against prime contractors who fail to make a good faith effort to achieve their subcontracting plan goals.

P.L. 100-533, the Women's Business Ownership Act of 1988, also amended the Small Business Act to make statutory the Federal program for women-owned small businesses created in 1979 under Executive Order 12138. The Act also established the National Women's Business Council. Policy Letter 80-4 of the Office of Federal Procurement Policy (OFPP) established uniform Government-wide procurement policies for women-owned small businesses. Federal agencies are now required to encourage women-owned small business participation in their prime and subcontract awards.

P.L. 103-355, the Federal Acquisition Streamlining Act (FASA) of 1994, also amended the Small Business Act to accommodate a Government-wide goal of **5 percent of total prime contract awards to women-owned small businesses**. This Act deleted existing separate coverage relating to women-owned businesses and revised existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. Additionally, P.L. 103-355 removed the Labor Surplus Area (LSA) set-aside and subcontracting programs. The Standard Forms 294 and 295 were also revised and streamlined.

The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program"). The purpose of the HUBZone Program is to provide Federal-contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

Section 308 of the Veterans Benefit Act of 2003 amended the Small Business Act to provide for a procurement program for service-disabled veteran-owned small business concerns (SDVOSB's). Specifically, the law provides that contracting officers may restrict competition to SDVOSB's under specific circumstances. Accomplishing subcontracting targets for Veteran-Owned Small Businesses (VOSB) were encouraged

under previous legislation and regulation.

The small business program is implemented in Part 19 of the Federal Acquisition Regulation (FAR), and in Part 319 of the Department of Health and Human Services Acquisition Regulation (HHSAR).

B. HHS POLICY AND RESPONSIBILITY

It is the policy of the Department of the Health and Human Service's to ensure that opportunities to compete for and receive a fair share of the Department's procurement expenditures are provided to small businesses, SDBs, 8(a)s, HUBZones, SDVOSBs and women-owned small businesses.

HHS has various programs to support and assist small businesses because they make valuable contributions to our economy. HHS is committed to increasing procurement opportunities for small businesses, including certified 8(a) firms". Section 15(k) of the Small Business Act, established by P.L. 95-507, requires that the Director, OSDDBU "have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act." This authority rests with the Director, OSDDBU. The Director, OSDDBU, also cooperates and consults with the Small Business Administration (SBA) to ensure the effective implementation of the Small Business Act in HHS' procurement programs.

Effective May 18, 2005, the HHS Small Business Program was consolidated across the Department. The reorganization provides the cornerstone for bringing all of the small business experts under the leadership of the OSDDBU Director. While the Small Business Specialists remain co-located in the various OPDIVs, they all report directly to the OSDDBU Director. This change strongly endorses the "One HHS" concept. The consolidation provides: (1) a uniform voice to internal and external customers, (2) a more efficient use and allocation of resources and (3) better overall service to the acquisition and program office personnel.

C. SMALL BUSINESS PROGRAM GOALS

The Small Business Act (15 U.S.C. 644(g)), as amended by P.L. 100-656, requires that the President establish annual Government-wide goals for procurement awards to small businesses, small disadvantaged businesses, HUBZone, SDVOSB and women-owned small businesses. The statutory minimum goal for small business participation must be no less than 23 percent of the total value of prime contract awards. The statutory minimum goals for small disadvantaged business and women-owned small business participation shall be no less than 5 percent of the total value of prime contract awards and 5 percent of the total value of subcontract awards. The statutory minimum goal for HUBZone and for Service-Disabled Veteran-Owned small businesses shall be no less than 3 percent of the total value of prime contract awards and no less than 3 percent of the total of subcontract awards.

The individual executive agency goals must represent the estimated maximum practicable opportunity for small businesses to participate in the performance of contracts let by the agency.

Section 9 of the Act, as amended by the Small Business Innovation Development Act, P.L. 97-219, requires Federal agencies with budgets for research and development (R&D) that exceed \$20 million for any fiscal year to establish goals for R&D awards to small businesses. The annual goals must be at least the percentage of the R&D budget expended by the agency with small business concerns in the immediately preceding fiscal year.

The Director OSDBU, after consultation with the SBA, establishes annual Departmental goals for prime contracts awarded to small businesses, small disadvantaged businesses, 8(a) firms, HUBZone, SDVOSB and women-owned small businesses on a bi-annual basis.

OPDIV heads are responsible and accountable for attainment of their Small Business Program (SBP) goals. Meeting or exceeding all HHS Small Business goals is contained in the Performance Plans of all persons involved in the acquisition process (program office, acquisition office and small business office personnel). The Director, OSDBU, flows down the OPDIV goals, based on historical Departmental performance and projected procurements/acquisition plans.

Reports of the Department's performance against its goals are sent annually to the SBA for submission to the **President**. The reports must explain any failure to achieve a goal and the actions planned to achieve goals in the succeeding fiscal year.

D. DUTIES OF THE SMALL BUSINESS SPECIALISTS

The primary duties of the SBS are to:

- Review all actions between \$25,000 and \$100,000 that involve the dissolution of the mandatory reservation for small businesses. The SBS may establish lower review thresholds. The SBS shall, whenever possible, suggest potential small business sources. The review shall be documented in the contract or order file as prescribed in Chapter 3 of this Handbook.
- Review all procurement requisitions over the simplified acquisition threshold (\$100,000) to make recommendations regarding set-asides for the small business programs. The SBS may review Government-wide Acquisition Contracts (GWAC) vehicles and GSA schedule buys, at their discretion. Review by the SBA PCR is not required for internal GWACs and GSA schedule buys. The SBS may establish lower review thresholds. The SBS shall, whenever possible, provide the names of potential small business

sources. The review shall be documented in the acquisition file as prescribed in Chapter 3 of this Handbook.

- Review all proposed contracts to other than small businesses over the subcontracting plan threshold (\$500,000/\$1,000,000 for construction) to make recommendations for subcontracting possibilities.
- Review all proposed prime contractors' subcontracting plans, using the standardized subcontracting review checklist www.hhs.gov/osdbu/knownet, prior to submitting the plan to the SBA Procurement Center Representative (PCR) for concurrence and the Director, OSDBU for approval (unless approval authority has been delegated to the SBS). The SBS review shall include recommendations regarding acceptance or rejection of the plans. If the plan is incomplete or otherwise unsatisfactory, the SBS shall work with the contracting officer and the prime contractor to negotiate an acceptable plan.
- Monitor the subcontracting performance of all prime contractors to ascertain achievement of established subcontracting goals on a regular basis throughout the year. Work with the Contracting Officer to address situations that need correction, including a renegotiation of subcontracting goals.
- Serve as the OPDIV's primary contact to coordinate with the SBA PCR, the DIRECTOR, OSDBU, other government agencies and the business community on SBP matters.
- Coordinate with the HCA, contracting staff and OPDIV Competition Advocate to ensure that the SBP objectives are fully integrated into the OPDIV's broad procurement program.
- Develop and maintain a program to identify small business, small disadvantaged, 8(a), HUBZone, VOSB, SDVOSB and women-owned small business sources.
- Assist small business concerns to obtain timely payments, late payment interest penalties, or information due to such concerns, in conformance with Chapter 39 of 31 U.S.C., by coordinating with OPDIV Prompt Payment Officers.
- Certify on each Justification for Other than Full and Open Competition (JOFOC) that a search of vendor files on the Central Contractor Registration (CCR) system was made to identify potential offerors. If any sources are found, the SBS shall attach a list of the potential vendors to the JOFOC and in conjunction with the SBA/PCR, recommend disapproval if sufficient qualified sources are identified.

- Assist contract specialists and contracting officers to identify small business sources for particular acquisitions. The SBS shall query the CCR system, and vendor capability statements on hand. If no small business sources are found for any given acquisition, the SBS may consult the SBA Procurement Center Representative (PCR) and the Director, OSDDBU, for assistance.
- Participate in the Advance Acquisition Planning to determine acquisition strategies, including set-aside possibilities, substantial subcontracting plans, etc., as described in FAR Part 7.
- Be knowledgeable of the OPDIV's Forecast of Contract Opportunities, to identify potential set-asides and assist vendors in marketing to the appropriate program offices. www.hhs.gov/osdbu/publications
- Assist program managers as early as possible in the acquisition cycle to identify potential small business sources, including arranging for and attending marketing presentations by such firms.
- Verify that solicitations that are total or partial small business set-asides clearly set forth the applicable North American Industry Classification System code (NAICS) code and small business size standard.
- Ensure that financial assistance available under existing regulations is offered (e.g., negotiation of payment due dates, progress payments, advance payments, etc.), and that requests for such assistance by small business offerors are not construed as a handicap in contract awards.
- Participate in pre-award surveys conducted by the OPDIV to make preliminary determinations of responsibility of small business concerns, and ensure that prospective small business contractors found to be irresponsible are aware of their option to apply for a certificate of competency.
- Help the OPDIV HCA ensure that the OPDIV is accurately reporting its prime small business awards into the HHS DCIS.
- Make copies of solicitations available to SBA upon request. (Use FEDBIZOPPS for this.)
- Participate regularly in government and industry conferences to assist small businesses and promote HHS' acquisition programs upon request of the OSDDBU office.
- Advise and counsel small business firms on acquisition matters and assistance available from other Federal agencies, and provide Departmental and OPDIV literature about the agency to those businesses.

- Participate in the development, implementation, and review of automated contracting systems to ensure that the interests of the small business program are considered.
- Develop, with the HCA, specific program activities and objectives to increase small business participation in the OPDIV's procurement.
- Ensure that the OPDIV's small business program is frequently publicized in the appropriate media. This could include but is not limited to internal newsletters, weekly reports, and activities such as conducting SBP briefings for program personnel.
- Monitor prime contractor compliance with subcontracting plans. Conduct subcontracting compliance reviews of prime contractor's subcontracting programs.
- Submit semi-annual OPDIV subcontracting achievement reports to the OSDBU office. This report consolidates SF 294 reporting by company.
- Report any 8(a) contractor performance problems identified by the contracting officer promptly to the Director, OSDBU, the SBA PCR and the SBA contracting officer.
- Provide reports and other information to the Director, OSDBU, as required, regarding OPDIV small business program performance.

F. ENCOURAGING SMALL BUSINESS PARTICIPATION

HHS contracting officers shall refer to Federal Acquisition Regulation (FAR) 19.202-1 to ensure that small business concerns have an equitable opportunity to compete for all procurement opportunities.

In addition, HHS OPDIV Contracting Officers shall take the following actions to encourage small business participation:

- Support the participation of the SBS in the advance procurement planning process.
- Prepare annually a forecast of contract opportunities, which identifies each anticipated purchase in excess of \$100,000. The forecast preparation should be coordinated with the OPDIV SBS. A description of the purchase, the (NAICS) code, the estimated value, the estimated quarter for release of the solicitation, the name and telephone number of a contact person for each entry, etc., shall be identified. The OPDIV forecast shall be submitted to the OSDBU for consolidation into the Departmental forecast. The specific

deadline for submitting forecast information will be set forth in a memo from the OSDDBU on a fiscal year basis.

- Use total or partial small business set-asides whenever there are at least two responsible small businesses qualified to respond. (See FAR 19.502-2 and 19.502-3).
- Use 8(a) set-asides whenever qualified 8(a) firms can be identified for a particular acquisition. (See FAR 19.804-1).
- Use HUBZone set-asides whenever there are two or more HUBZone companies qualified to perform the work that will submit proposals.
- Use SDVOSB's set-asides when the CO determines that there are two or more SDVOSB's to perform the work.
- With the exception of existing work in the 8(a) program, which should remain in the 8(a) program, give preference to the sub-category that needs the most improvement. This applies to the following set-aside categories: Service-Disabled Veteran-Owned SBs, HUBZones, and 8(a)s.
- Ensure that small businesses are paid timely, in accordance with the Prompt Payment Act Amendments of 1988, as amended, consistent with FAR 32.9 and 19.702.

G. OUTREACH ACTIVITIES

1. Introduction

It is the policy of the Department of Health and Human Services to engage in a meaningful, substantial outreach program to assist, counsel, and advise small, small disadvantaged, HUBZone, SDVOSB and women-owned small business concerns on procedures for doing business with HHS.

Our mission is to:

- assist all categories of small business, to develop, grow, and ensure their long-term success;
- continually foster an environment where these highly skilled suppliers may compete successfully for a fair share of HHS's procurement on their own merits; and
- assist large businesses to increase subcontracting opportunities for small businesses.

The Department has developed specific marketing materials and outreach activities to accomplish our mission. Specific outreach activities are highlighted in the following paragraphs.

2. Marketing Documents

The Department of Health and Human Services produces two documents that help small businesses in their marketing efforts. The documents are: (1) The *Forecast of Contract Opportunities* which lists the potential procurement opportunities for each OPDIV and (2) *Doing Business with HHS* which helps small businesses focus their marketing on the OPDIVs that purchase their particular products or services. The documents may be obtained via the Internet on HHS' Home Page at <http://www.hhh.gov/osdbu>.

3. Vendor Outreach Sessions

The OSDBU sponsors a series of small business Vendor Outreach Sessions (VOS). The purpose of the sessions is to provide the small business community the opportunity to meet with all the HHS SBS to discuss their capabilities and learn of potential procurement opportunities. Also, HHS Prime Contractors and other Government agencies are often invited to participate in the VOS sessions so that small businesses may learn of potential HHS subcontract opportunities or other agency procurement opportunities. Special VOS sessions for specific categories of small businesses are conducted throughout the year. The sessions are usually held the first Tuesday of each month and are generally held in the Washington, DC metropolitan area.

During these sessions, vendors will have opportunities to meet with the individual SBS. These appointments are generally limited to fifteen minutes in duration in order to allow all vendors an equal opportunity. These sessions are intended to allow a company to give an introduction of their capabilities and develop a basic understanding of how to do business with each OPDIV. A follow-up meeting with OPDIV SBS and program personnel may be scheduled for a later date, if appropriate.

5. Other Outreach Activities

Throughout the year, HHS participates in a number of other outreach activities. These include: (1) National Conferences, (2) Regional Conferences, (3) Minority Enterprise Development Week, (4) Small Business Week, (5) Congressionally sponsored procurement fairs, (6) Trade Association Conferences, and (7) various networking breakfasts and speaking engagements.